

### REMARKS

This responds to the Office Action mailed on July 17, 2007.

Claims 1-20, 26-31, 34, 36, 41, 52, 59, 61, 66, and 77 are amended, no claims are canceled, and no claims are added; as a result, claims 1-20, 26-31, 34-53, and 59-78 are now pending in this application.

#### §101 Rejection of the Claims

Claims 41-52 and 66-77 were rejected under 35 U.S.C. § 101 for not providing a practical application that produces a useful result, specifically, for setting forth the facilitation of an exchange but not reciting the exchange.

Independent claims 41 and 66 are amended to explicitly recite the exchange. As amended, claims 41 and 66 provide a practical application that produces a useful result. Claims 42-52 and 67-77 are dependant on the claims 41 and 66 correspondingly and, as amended, incorporate the elements of independent claims 41 and 66 that are being amended to explicitly recite the exchange. Applicants respectfully submit that the amendments make the Office Action basis for rejection of claims 41-52 and 66-77 under 35 U.S.C. § 101 moot.

#### §102 Rejection of the Claims

Claims 1-20, 26-31, 34-53 and 59-78 were rejected under 35 U.S.C. § 102(b) for anticipation by Auction Arms (hereinafter “Arms”).

#### Concerning claim 1, 8 :

Claim 1 recites as amended (in part):

“a processor coupled to a memory through a bus; an auction price-setting process executed from the memory by the processor to cause the processor to automatically publish at least one of a proxy bid information and a reserve price when a high proxy bid is less than the reserve price, the proxy bid information and

the reserve price being associated with a listing for an item during an auction price-setting process; and an auction price-setting process executed from the memory by the processor to cause the processor to keep proxy bid information and the reserve price be kept confidential when the high proxy bid is more than the reserve price”

Claim 8 recites as amended (in part):

“a processor coupled to a memory through a bus; an auction price-setting process executed from the memory by the processor to cause the processor to ~~facilitate an~~ exchange of at least one of a proxy bid information of a buyer and reserve price information of a seller when a high proxy bid is less than the reserve price, the at least one of the proxy bid information and the reserve price information being associated with a listing utilizing the auction price-setting process; and an auction price-setting process executed from the memory by the processor to prevent the processor from exchanging proxy bid information and the reserve price when the high proxy bid is more than the reserve price”

Examiner notes that the language of independent claims 1 and 8 that follows the conditional statements is conditional on the occurrence of the events recited in the conditional statements. According to Examiner, claims 1 and 8 were not examined in their entirety because once the positively recited steps are satisfied; the methods as a whole are satisfied.

Examiner is respectfully invited to point Applicants to a rule in the MPEP that would allow partial examination of a claim based on a conditional limitation used. Applicants respectfully submit that claims 1 and 8 should be examined in their entirety to give patentable weight to both the language preceding and following the conditional limitations. Thus, both scenarios following occurrence of nonoccurrence of the conditions stated in claim 1 and 8 should be considered.

Even though Applicants disagree with the basis of the rejection stated, Applicants are herein amending claims 1 and 8 to positively recite elements occurring subsequent to the

satisfaction of the conditions stated in claim 1 and 8. In view of the amendments and the arguments made above with respect to the rejection of claims 1 and 8, the rejections are moot and should be withdrawn.

Concerning claims 2-7 and 9-20:

Applicants respectfully submit that dependent claims 2-7 and 9-20 depend directly or indirectly from their respective independent claims 1 and 8. As such, each of these dependent claims incorporates all the limitations of their parent respective independent claims. Accordingly, Applicants submit that these dependent claims are patentable for at least the reasons set forth above.

Thus, Applicants respectfully request withdrawal of the rejections of claims 2-7 and 9-20. For brevity, Applicants reserve the right to present further remarks concerning the patentable distinctiveness of the features of such dependent claims.

Concerning claims 26-31, 34-53, and 59-78:

According to Examiner, claims 26-31, 34-53, and 59-78 contain limitations similar to claims 1-20 and therefore are rejected under the same rationale as claims 1-20. Applicants submit that these claims are patentable for at least the reasons set forth above with respect to claims 1-20.

Thus, Applicants respectfully request withdrawal of the rejections of claims 26-31, 34-53, and 59-78. For brevity, Applicants reserve the right to present further remarks concerning the patentable distinctiveness of the features of claims 26-31, 34-53, and 59-78.

### CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' attorney at 408-278-4051 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

### **Reservation of Rights**

In the interest of clarity and brevity, Applicant may not have addressed every assertion made in the Office Action. Applicant's silence regarding any such assertion does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

AMENDMENT AND RESPONSE UNDER 37 CFR § 1.116 – EXPEDITED PROCEDURE

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Title: METHOD AND SYSTEM TO PUBLISH A SELLER FIXED PRICE OFFER

Respectfully submitted,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop RCE, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 3 day of December 2007.

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